

Dorothy Rosensweig (DR - 6006)
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Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAJOR KHAN,	:
	:
Plaintiff,	:
	:
-- against --	:
	:
UBS FINANCIAL SERVICES, INC.,	:
	:
	:
Defendant.	:
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05 CV 4922 (SHS)
(Filed Electronically)
DECLARATION OF
DOROTHY ROSENSWEIG, ESQ.
IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

DOROTHY ROSENSWEIG, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the law firm of Epstein Becker & Green, P.C., attorneys for Defendant UBS Financial Services Inc. ("UBSFS") in this matter and am fully familiar with the facts and circumstances of the matters set forth herein. I respectfully submit this Declaration, with Defendant's Local Rule 56.1 Statement of Undisputed Material Facts and Memorandum of Law in Support of Defendant's Motion for Partial Summary Judgment, both of which are submitted herewith under separate cover and have been filed under seal.

2. Attached hereto are all of the affidavits and/or declarations, deposition transcript pages and documents upon which UBSFS relies in the instant motion for partial summary judgment. As indicated below, some of these materials have been designated as "Confidential"

per the terms of the Stipulation and Order Governing the Production and Exchange of Confidential Material so ordered by this Court on March 1, 2006, and thus are being filed under seal.

Affidavits, Declarations, Transcripts and Exhibits Filed Electronically

3. Attached hereto are true and correct copies of the affidavits and/or declarations of the following individuals:

Exhibit A:	Barry Buchsbaum ("Buchsbaum Decl.")
Exhibit B:	Thomas E. Carbin ("Carbin Decl.")
Exhibit C:	Claudia M. Cohen, Esq. ("Cohen Decl.")
Exhibit D:	Mario DiTrapani ("DiTrapani Decl.")
Exhibit E:	Robert Eckert ("Eckert Decl.")
Exhibit F:	Lori Eckstein ("Eckstein Aff.")
Exhibit G:	Jay Feldman ("Feldman Decl.")
Exhibit H:	Jim Harmon ("Harmon Decl.")
Exhibit I:	Declaration of Major Khan in Opposition to Defendant's Motion for Partial Dismissal and/or Summary Judgment dated August 26, 2005 ("8/26/05 Khan Decl.")
Exhibit J:	Declaration of Major Khan dated January 23, 2006 ("1/23/06 Khan Decl.")
Exhibit K:	Joseph Tota ("Tota Decl.")
Exhibit L:	Patrick Weiler ("Weiler Aff.")
Exhibit M:	Lawrence Zech ("Zech Decl.")
Exhibit N:	David Zoll ("Zoll Decl.")

4. Attached hereto are true and correct copies of the pages of the deposition transcripts¹ of the following individuals cited by Defendant in the instant motion for partial summary judgment:

Exhibit O:	Jonathan R. Baum ("Baum Tr.")
Exhibit P:	Ellen Breitner ("Breitner Tr.")
Exhibit Q:	Barry Buchsbaum ("Buchsbaum Tr.")
Exhibit R:	Frank Catania ("Catania Tr.")
Exhibit S:	Timothy Gandy ("Gandy Tr.")
Exhibit T:	Francine Franklin Hoyt ("Hoyt Tr.")
Exhibit U:	Patrick M. Mendenhall ("Mendenhall Tr.")
Exhibit V:	Larry D. Radford ("Radford Tr.")
Exhibit W:	Ashaki Rucker ("Rucker Tr.")
Exhibit X:	Patrick Weiler ("Weiler Tr.")
Exhibit Y:	Stephen A. Whinston ("Whinston Tr.")
Exhibit Z:	David L. Zoll ("Zoll Tr.")

5. Attached hereto are true and correct copies of the following exhibits:

Exhibit AA:	Complaint in this action
Exhibit BB:	New Hire Package (D 2670)
Exhibit CC:	Amended Complaint in this action
Exhibit DD:	new Hire Form (D 0115)
Exhibit EE:	HRMS Change Document (D 0020)

¹ The Breitner and Hoyt depositions were taken in another proceeding, *Maria Tartaglia v. UBS PaineWebber Incorporated and Herbert F. Janick*, Docket No. HUD 2550-99, Superior Court of New Jersey, Hudson County Division on November 14 and 15, 2002 and June 12, 2002, respectively.

Exhibit FF:	HRMS Change Document dated June 19, 1996 (D 0097)
Exhibit GG:	HRMS Current & Historical Information as of November 1, 1997 (D 0107)
Exhibit HH:	HRMS Current & Historical Information as of April 25, 2000 (D 0073)
Exhibit II:	the Personnel Salary Data form (D 0057)
Exhibit JJ:	HRMS Change Document stamped May 15, 2002 (D 0059)
Exhibit KK:	HRMS Change Document prepared December 27, 2000 (D 0064)
Exhibit LL:	PCG Talent Review High Potential (D 0242)
Exhibit MM:	HRMS Current & Historical Information as of December 6, 2001 (D 2668)
Exhibit NN:	Employee Handbook Excerpt (MK 000345, 000347)
Exhibit OO:	Respect in the Workplace program (MK 000349-000353)
Exhibit PP:	New Employee Acknowledgement dated 4/11/95 (D 0025)
Exhibit QQ:	Branch Management Assessment Candidate Nomination Form (D 0330-333)
Exhibit RR:	Email dated 5/8/03 from Khan to Eckstein with handwritten note by Eckstein thereon (D 0138)
Exhibit SS:	Official Exam Results from CRD (D 0371)
Exhibit TT:	Criminal History Record Information for Khan (D 0219-0222)
Exhibit UU:	Final Letter of Warning dated May 12, 2003 with Eckstein's handwritten note (D 0176-0177)
Exhibit VV:	Acknowledgment dated 4/10/95 (D 0009)
Exhibit WW:	Khan's U-5 (MK 000180-000183)

Exhibit XX: 4/14/06 letter from Khan's counsel

Exhibit YY: Excerpt from "kickoff" presentation for the 2002 MDP (MK 000333)

Exhibit ZZ: Khan's employment application (D 0002)

Affidavits, Declarations, Transcripts and Exhibits Designated as "Confidential" and Filed Under Seal

6. Attached hereto are true and correct copies of the affidavits and/or declarations of the following individuals that are being filed under seal

Exhibit AAA: Teri Karole ("Karole Decl.")

7. Attached hereto are true and correct copies of the pages of the deposition transcripts of the following individuals cited by Defendant in the instant motion for partial summary judgment that are being filed under seal:

Exhibit BBB: Mohammad Mahmood Khan a/k/a Major Khan (Plaintiff) ("Khan Tr.")

Exhibit CCC: Lori Eckstein ("Eckstein Tr.")

Exhibit DDD: Joseph Tota ("Tota Tr.")

8. Attached hereto are true and correct copies of the following exhibits that are being filed under seal:

Exhibit EEE: Plaintiff's Objections and Responses to Defendant's Request to Admit (filed under seal)

Exhibit FFF: June 6, 2001 Bill Weisser memorandum announcing Thomas Carbin's promotion to Sales Manager (D 1154) (filed under seal)

Exhibit GGG: Plaintiff's 2002 and 2003 W-2 Forms (MK 7-8; 495-496) (filed under seal)

Exhibit HHH: UBSFS Equal Employment Opportunity Policy and Policy Prohibiting Harassment from February 1996 Policies and Procedures (D 0615, 0625-627) (filed under seal)

Exhibit III: June 1996 Employee Handbook (D 0392-393, 0402-0404) (filed under seal)

Exhibit JJJ: Guide to Working at PaineWebber (D 0518, 0523-0525, 0536-0538, 577, 580 (filed under seal)

Exhibit KKK: July 2000 Code of Conduct (D 0583, 0611-0612) (filed under seal)

Exhibit LLL: 8/18/03 Human Resources Connection Guiding Policies (D 2703-2707, 2713-2717) (filed under seal)

Exhibit MMM: 1997, 1999 and 2001 Respect in the Workplace Programs, D 2391- 2397 (filed under seal)

Exhibit NNN: Slide presentations given at Respect in the Workplace programs, D 1936-1957, 2276-2296; D 2070-2091 (filed under seal)

Exhibit OOO: 8/30/02 email from Zoll (D 1934-1935) (filed under seal)

Exhibit PPP: 11/19/03 HR Connection Problem Resolution (D 0676-0679) (filed under seal)

Exhibit QQQ: Respect in the Workplace Handbook (D 2179, 2185-2187) (filed under seal)

Exhibit RRR: Khan's annual certifications for 2001 and 2002 (D 2793-2795, 4577-4578, 4581-4584, 4587, 4589-4590, 4593-4597) (filed under seal)

Exhibit SSS: Email chain ending with email from Khan to Jennifer Tufaro on March 5, 2002 (D 2232) (filed under seal)

Exhibit TTT: Excerpt from "kickoff" presentation for the 2002 MDP (D 2163) (filed under seal)

Exhibit UUU: Emails dated 8/30/02 from Brennan to Weiler, 12/2/02 from Weiler to Khan and 12/5/02 from Khan to Weiler (D 2064, 2039 and 2309) (filed under seal)

Exhibit VVV: Email from Khan to Weiler dated December 5, 2002 (D 1932) (filed under seal)

Exhibit WWW: Mendenhall 12/13/02 email to Khan (D 1856) (filed under seal)

Exhibit XXX: 2/28/03 email from Heather Negley to Patrick Weiler with list of licenses/registrations of 2002 MDP class (D 1895-96) (filed under seal)

Exhibit YYY: 9/8/00 memo from Helen Balasz to Thomas Carbin (D 2820) (filed under seal)

Exhibit ZZZ: 11/12/03 email from Shannon McIntire (D 0766) (filed under seal)

Exhibit AAAA: Page 2 of New Hire Form (D 0763) (filed under seal)

Exhibit BBBB: Letter of Understanding Worksheet (D 0761) (filed under seal)

Exhibit CCCC: Web CRD Exam Information for William V. Anderson (D 0833) (filed under seal)

Exhibit DDDD: Web CRD Registrations Summary for William V. Anderson (D 0830, 0832) (filed under seal)

Exhibit EEEE: New Hire Form for William Anderson (D 0762-0764) (filed under seal)

Exhibit FFFF: CRD Snapshot – Individual for William Vaughn Anderson (D 0793) (filed under seal)

Exhibit GGGG: New Hire Form for Kevin Smith (D 0712-0713) (filed under seal)

Exhibit HHHH: Compliance Department Registered Candidate Review Sheet (D 0717) (filed under seal)

Exhibit IIII: CRD Snapshot-Individual, pages 4-7 (D 0702- 0705) (filed under seal)

Exhibit JJJJ: HRMS Change Document prepared on 10/3/03 (D 4667) (filed under seal)

Exhibit KKKK: Web CRD Exam information for Brian T. Cain (D 1446) (filed under seal)

Exhibit LLLL: Registrations with Current Employers for Brian T. Cain (D 1451) (filed under seal)

Exhibit MMMM: Branch Management Assessment Candidate Nomination Form for Brian T. Cain (D 0939-0940) (filed under seal)

Exhibit NNNN: Leadership and Management Development Program 2002 Class of Branch Managers (D 4372-4383) (filed under Seal)

Exhibit OOOO: HRMS Change Documents for Judy Keating (D 0842-0843) (filed under seal)

Exhibit PPPP: Web CRD Exam History for Judith A. Keating (D 0840) (filed under seal)

Exhibit QQQQ: Composite Information for Judith A. Keating (D 0837) (filed under seal)

Exhibit RRRR: HRMS Change Document for Judith A. Keating (not Bates stamped) (filed under seal)

Exhibit SSSS: HRMS Personnel Data Form for Lawrence Zech (not Bates stamped) (filed under seal)

Exhibit TTTT: Web CRD Exam Information for Lawrence R. Zech (D 0970) (filed under seal)

Exhibit UUUU: Web CRD Registrations with Current Employers Lawrence R. Zech (D 1000) (filed under seal)

Exhibit VVVV: Memo re: Zech becoming manager of Palm Desert, CA office (D 1156) (filed under seal)

Exhibit WWWW: 9/8/00 Weisser letter to Robertello (D 1106) (filed under seal)

Exhibit XXXX: Web CRD Exam Information for Thomas E. Carbin (D 2800) (filed under seal)

Exhibit YYYY: Web CRD Exam Information with Current Employers (D 2799) (filed under seal)

Exhibit ZZZZ: 2/2/01 memo from Robert Giordano (D 1153) (filed under seal)

Exhibit AAAAA: UBS Financial Services Ops Management Services 3/18/06 Employment History for Catherine A. Rosso (D 4157) (filed under seal)

Exhibit BBBB: UBS Financial Services Ops Management Services 4/25/06 list of employees who were active in BrMgt/Business and Strategic Development in 2001 (D 4514) (filed under seal)

Exhibit CCCCC: August 26, 2003 email from Major Khan to Ray Robertello (D 1739) (filed under seal)

Exhibit DDDDD: UBS Financial Services Ops Management Services April 25, 2003 List of Employees Active in National Recruiting in 2003 (D 4516) (filed under seal)

Exhibit EEEEE: Levey 2002 Performance Year Compensation Profile (D 3040) (filed under seal)

Exhibit FFFFF: Data from Corporate Comp (D 4156) (filed under seal)

Exhibit GGGGG: UBS Financial Services Ops Management Services April 25, 2003 List of Employees Active in National Recruiting in 2002 (D 4515) (filed under seal)

Exhibit HHHHH: 2002 MDP Branch Manager Chart (D 2228) (filed under seal)

Exhibit IIII: 10/29/03 email from Karole to Rucker (D 1737) (filed under seal)

Exhibit JJJJ: May 12, 2003 email from Rucker to Eckstein with attached draft Final Letter of Warning (D 1729-1731) (filed under seal)

Exhibit KKKKK: Eckstein notes of issues with Khan's performance (D 2853-2854) (filed under seal)

Exhibit LLLLL: August 12, 2003 page from Buchsbaum's calendar (D 4116) (filed under seal)

Exhibit MMMMM: Buchsbaum's notes of August 12, 2003 discussion with Khan and prior discussions with Eckstein and Weiler (D 2785-2786) (filed under seal)

Exhibit NNNNN: 11/24/03 email from Eckstein to Karole (D 4638) (filed under seal)

Exhibit OOOOO: Eckstein November 24, 2003 email to Karole (D 4303) (filed under seal)

Exhibit PPPP: September 2, 2003 invoice from Rick Peterson & Associates (D 2247) (filed under seal)

Exhibit QQQQ: 11/21/03 Eckstein letter to Peterson along with copy of check 12473 from Rick Peterson & Associates to UBS (D 2783-2784)

Exhibit RRRR: 12/16/02 emails from Peterson to Khan and Khan to Peterson (D 2782) (filed under seal)

Exhibit SSSS: Pages from 8/18/03 Human Resources Connection (D 2687-2688) (filed under seal)

Exhibit TTTT: November 7, 2003 Rucker email to Robertello (D 2497) (filed under seal)

Exhibit UUUU: Chart of names/race and/or ethnicity of other individuals with same U-5 language 2001-2005 (D 4629-4637) (filed under seal)

Exhibit VVVV: Khan invoices to Berger & Montague (MK 000463; MK 000466; MK 000474; MK 000480; MK 000487; MK 000494; MK 000543) (filed under seal)

Exhibit WWWW: Berger & Montague checks payable to Khan, MK 000461; MK 000464; MK 000472; MK 000478; MK 000485; MK 000492; MK 000538; MK 000540 (filed under seal)

Exhibit XXXX: Berger & Montague Request For Check Forms (MK 000462; MK 000465; MK 000473; MK 000479; MK 000486; MK 000493; MK 000539; MK 000541-542) (filed under seal)

Exhibit YYYYY: 2005 Miscellaneous Income Form (MK 00574) (filed under seal)

9. Plaintiff Khan produced documents Bates stamped MK 000345-000347, MK 000349-000353 and MK 000355-000358 on January 11, 2006. UBSFS did not produce documents in response to Plaintiff's First Request for Production of Documents until January 26, 2006.

10. Khan's attorneys never produced the tape of his post-termination conversation with Joseph Tota to Defendant, and did not inform UBSFS' counsel that it existed until Plaintiff testified as such during his deposition on February 15, 2006.

11. UBSFS sent its March 2, 2006 letter to Judge Stein prior to receiving Plaintiff's email and attached letter of the same date, which was not sent to UBSFS' counsel until 2:41 p.m. on March 2, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

s/Dorothy Rosensweig

DOROTHY ROSENSWEIG (DR-6006)

Executed New York, New York
at:
On: September 1, 2006